

**CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY**  
**BOND FINANCING PROGRAM**  
**Meeting Date: October 27, 2010**  
***Request for Final Resolution and***  
***Request for Tax-Exempt Bond Allocation Approval***

Prepared by: *Samantha Russell*

<b>Applicant:</b>	Hilmar Cheese Company, Inc	<b>Amount Requested:</b>	\$9,695,000
		<b>Application No.:</b>	00814
<b>Project</b>	Merced County	<b>Final Resolution No.:</b>	510
<b>Location:</b>		<b>Prior Actions:</b>	IR Approved 11/19/2008

**Summary.** Hilmar Cheese Company, Inc. and/or its Affiliates (the “Company”) requests approval of a Final Resolution and Volume Cap Allocation Resolution for an amount not to exceed \$9,695,000 to finance the cost of acquisition, construction and installation of equipment used to improve and increase capacity to the Company’s wastewater treatment operations. The Project is an expansion and enhancement to an existing preliminary, secondary and tertiary wastewater treatment plant including facilities related to the ultimate disposal of the treated effluent.

**Borrower.** The Company was incorporated in California in April 1984. The Company produces cheese and whey products from its facility in Hilmar, CA. More than one million pounds of cheese is produced a day, and in order to produce this amount of cheese, the Company processes more than two-million gallons of milk each day received from more than 270 dairies and 160,000 cows. More cheese is produced from this facility than any other manufacturer in the world.

The Company ownership is as follows:

Richard and Sharon Clauss  
William and Carolyn Ahlem  
Charles and DruAnn Ahlem  
James and Carol Ahlem  
Vernon and Mary Wickstrom  
Delton and Kathy Nyman  
Lloyd Nyman  
Phil and Nadine Fanelli  
Donald and Elsa Sherman  
Ralph and Dianne Ahlem  
Bob (deceased) and Dulcie Dias

**Legal Questionnaire.** The Staff has reviewed the Company’s responses to the questions contained in the Legal Status portion of the Application. No information was disclosed that raises questions concerning the financial viability or legal integrity of this applicant. On January 26, 2005, the California Regional Water Quality Control Board (CRWQCB), Central Valley Region, issued an Administrative Civil Liability Complaint to the Company. The complaint

alleged that Hilmar violated its discharge permit by discharging wastewater containing salt, the amount of which exceeded permitted levels. On March 26, 2006 a Settlement Agreement was reached between the CRWQCB and the Company. The agreement included an interim permit, the conditions of which were met and a non-interim permit was adopted January 29, 2010, effective April 1, 2010. Staff contacted the CRWQCB and has confirmed that the Company has complied with the Settlement Agreement.

**TEFRA.** The TEFRA hearing was held on November 12, 2009. There were no comments received in support of or in opposition to this Project.

**SBAF Contribution.** The Company is a large business and will contribute up to \$63,987 to the CPCFA Small Business Assistance Fund (SBAF).

**Prior Financings.** None

**Project Description.** The Project includes enhancements and expansion to an existing preliminary, secondary and tertiary wastewater treatment plant including facilities related to the ultimate disposal of the treated effluent. The treatment process will render the water suitable to supplement surrounding crop production reducing the amount of water consumption of local farmers. Solids removed from the water treatment process will be composted off site and/or disposed of by the Company. Concentrated minerals go to the deep well injection system; the other solids go to Municipal Utility District for energy recovering or treatment in their system.

The Project includes the construction and installation of diffused air filtration systems, reverse osmosis evaporator, water distribution piping, chemical treatment tanks, pumps and pipes, computer control systems, metering pumps, screens and deep well injection systems. The fully integrated four stage treatment system is a “State of the Art” water reclamation project and represents the single largest investment made in California by any other food processor.

The anticipated Project and issuance costs are listed below:

Acquisition & Installation of New Equipment	\$9,501,100
Bond Issuance Expenses	<u>193,900</u>
<b>Total:</b>	<b><u>\$9,695,000</u></b>

*Note: The Project costs reported in the Borrower’s application and shown here in staff’s report are estimated costs. At the time this financing closes, the estimated Project costs will be finalized and stated in the Tax Certificate. Variations from the costs shown in the application and in this report may occur prior to the closing due to increased costs of certain components of the Project from original estimates, and other reasons. In addition, such costs may vary after closing due also to increased costs, as well as common design and equipment modifications during construction, differences in equipment due to future changes in law or regulation or for other reasons. However, the Borrower confirms, through submission of a signed application and will confirm through covenants and representations in various bond documents, that all assets purchased with bond proceeds will qualify for tax exempt financing, that they will be used to complete the Project as described, and that the average life tests required by federal law and described in the Tax Certificate will continue to be met. Tax-exempt financing may be only one source out of multiple sources of financing for a given project.*

**Anticipated Timeline.** Construction, renovation and equipment purchases began in April 2008. The project is 75% complete. The Company anticipates completion by January 2011. The

Company understands tax law limits previously incurred costs that may be reimbursed with bond proceeds.

**Local Government.** Staff received a letter of support from Mr. Jeff Denham, Senator, 12<sup>th</sup> District (Attachment A).

**Pollution Control and/or Environmental Benefits.** The Company represents the Project will generate the pollution control and environmental benefits described below.

**Air Quality.** The treatment plant enhancements are expected to eliminate the current need to haul approximately 20 truckloads a day of a salt water solution to a Bay Area municipal water treatment facility. Approximately 60% of the water used at the facility is recycled water.

**Water Quality.** The treatment process will render the water suitable to supplement irrigation of surrounding crop production, therefore reducing the consumption of water that local farmers would otherwise require.

**Recycling of Commodities.** Solids removed from the water will be composted off site and disposed of by the company at either an approved composting facility or a Bay Area municipal water treatment facility.

**Permitting and Environmental Approvals.** The Company has provided copies of its Conditional Use Permit number CUP08-011.

**Particular Requirements for Wastewater Treatment Facilities.** Section 44539 of the CPCFA Act imposes special requirements on applicants for financing of wastewater treatment plants, including submission of certain plant operational information for review by water quality authorities. The Borrower is in the process of satisfying those requirements. The final resolution requires evidence that Section 44539 is satisfied prior to issuance of the bonds.

**Financing Details.** The Company anticipates issuance of negotiated tax-exempt, weekly reset, variable rate bonds with a term not to exceed 25 years for the qualifying portion of the Project. The Company plans to secure the bonds with an irrevocable, direct pay Letter of Credit with Bank of the West that is rated at least “A-” by Fitch Rating Agency or equivalent. The bonds will be non-AMT. The target date for financing is November 2010.

**Financing Team.**

**Underwriter:** W.R. Taylor & Company LLC  
**Bond Counsel:** Kutak Rock  
**Issuer’s Counsel:** The Office of the Attorney General

**Staff Recommendation.** Staff recommends approval of Final Resolution No. 510 and Volume Cap Allocation Resolution No. 08-242-12 for an amount not to exceed \$9,695,000 for Hilmar Cheese Company, Inc. and/or its Affiliates.

**FINAL BOND RESOLUTION OF THE  
CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY  
RELATING TO THE FINANCING OR REFINANCING OF  
WASTEWATER TREATMENT FACILITIES AND RELATED EQUIPMENT FOR  
HILMAR CHEESE COMPANY, INC. AND/OR ITS AFFILIATES**

**October 27, 2010**

**WHEREAS**, the California Pollution Control Financing Authority (“Authority”), has received the application of Hilmar Cheese Company, Inc., a California corporation (or any successor thereto, the “Borrower”), requesting financial assistance in an aggregate principal amount not to exceed \$9,695,000 to (1) finance the acquisition, construction and installation of wastewater treatment facilities and related equipment to be located at 9001 North Lander Avenue, Hilmar, California 95324 and all as more particularly described in the Term Sheet attached hereto as Exhibit A and incorporated herein (the “Term Sheet”) (collectively, the “Project”), (2) pay capitalized interest with respect to the financing, and (3) pay certain costs of issuance in connection with the financing; and has declared its intent to issue revenue bonds to provide such financial assistance; and

**WHEREAS**, the Borrower has requested the Authority to issue its revenue bonds in an amount not to exceed \$9,695,000 to assist in the financing of the Project; and

**WHEREAS**, the proceeds of such revenue bonds will be loaned to the Borrower under a loan agreement between the Authority and the Borrower; and

**WHEREAS**, the Borrower has provided documentation to the Authority demonstrating that the Project has complied with Division 13 (commencing with Section 21000) of the Public Resources Code, or is not a project under that division; and

**WHEREAS**, final approval of the terms of such revenue bonds and certain documents relating to such revenue bonds is now sought; and

**WHEREAS**, in order to enhance the marketability of the bonds, the Borrower has arranged for the financial institution, as named in the Term Sheet, to secure the bonds through the issuance of its direct-pay irrevocable letter of credit, thereby guaranteeing their repayment;

**NOW, THEREFORE, BE IT RESOLVED** by the California Pollution Control Financing Authority, as follows:

**Section 1.** The Project constitutes a “project” and the Borrower is a “participating party” within the meaning of the California Pollution Control Financing Authority Act (the “Act”).

**Section 2.** Pursuant to the Act, revenue obligations of the Authority, designated as the “California Pollution Control Financing Authority Variable Rate Demand Revenue Bonds (Hilmar Cheese Company, Inc. Project) Series 2010” (the “Bonds”), or such alternate designation as may be approved by the Executive Director, in an aggregate principal amount not to exceed \$9,695,000, is hereby authorized to be issued. The Bonds may be issued at one time, or from time to time, in one or more series separately or differently identified, and may be issued in a tax exempt or taxable mode, in accordance with the Indenture (as hereinafter defined) as finally executed. The proceeds of the Bonds shall be used to for the purposes set forth in first WHEREAS clause of this Resolution.

Prior to issuance of the Bonds, the Executive Director shall have received evidence that the Borrower has satisfied the requirements of Health & Safety Code section 44539, receipt of which shall be conclusively evidenced by execution and delivery of the Indenture.

**Section 3.** The Treasurer of the State of California (the “Treasurer”) is hereby authorized to sell the Bonds, at one time or from time to time on or before December 31, 2010, by negotiated sale, at such price, at such interest rate or rates and in such mode (taxable or tax-exempt) as he may determine, such determination to be as set forth in the hereinafter referred to Purchase Contract.

**Section 4.** The following documents:

- (i) a loan agreement relating to the Bonds (the “Loan Agreement”), between the Authority and the Borrower,
- (ii) an indenture relating to the Bonds (the “Indenture”), between the Authority and the trustee named in the Term Sheet (the “Trustee”),
- (iii) bond purchase contract relating to the Bonds among the Authority, the Treasurer and the underwriter named in the Term Sheet (the “Underwriter”), and approved by the Borrower (the “Purchase Contract”), and
- (iv) the preliminary official statement relating to the Bonds (the “Preliminary Official Statement”),

are hereby approved in substantially the forms on file with the Authority prior to this meeting, with such insertions, deletions or changes therein (including, without limitation, insertions, deletions or changes therein appropriate to reflect the form of credit enhancement for the Bonds) in substantial conformance with the Term Sheet as the officer(s) executing and/or delivering the same may require or approve, such approval to be conclusively evidenced by execution and delivery thereof in the case of the Loan Agreement, the Indenture and the Purchase Contract and by delivery thereof in the case of the Preliminary Official Statement.

**Section 5.** The Authority understands and agrees that pursuant to the terms of the Loan Agreement, the obligations of the Borrower may, under some circumstances, be carried out or assumed by a successor or assignee entity, or by an Affiliate of the Borrower. For purposes of this Resolution, an “Affiliate” of the Borrower means any person or entity which meets the definition of “Participating Party” in the Act and controls, is controlled by, or is under common control with, the Borrower, as shown by the possession, directly or indirectly, of the power to

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direct or cause the direction of its management or policies, whether through majority equity ownership, contract or otherwise.

**Section 6.** The dates, maturity dates, interest rate or rates, interest payment dates, denominations, forms, registration privileges, place or places of payment, terms of redemption and other terms of each series of the Bonds shall be as provided in the Indenture, as finally executed.

**Section 7.** The Underwriter is hereby authorized to distribute the Preliminary Official Statement to persons who may be interested in the purchase of the Bonds. The Underwriter is hereby directed to deliver (in a manner that complies with Securities and Exchange Commission rule 15c2-12(b)(3)) a copy of said final official statement (as finally executed, the “Official Statement”) to all actual purchasers of the Bonds.

**Section 8.** The Bonds, when executed, shall be delivered to the Trustee under the Indenture for authentication by the Trustee. The Trustee is hereby requested and directed to authenticate the Bonds by executing the Trustee’s certificate of authentication appearing thereon. The Trustee is hereby requested and directed to deliver the Bonds, when duly executed and authenticated, to The Depository Trust Company, New York, New York, on behalf of the Underwriter in accordance with written instructions executed on behalf of the Authority, which instructions are hereby approved. Such instructions shall provide for the delivery of the Bonds to The Depository Trust Company, on behalf of the Underwriter thereof, upon payment of the purchase price thereof.

**Section 9.** The Authority hereby dedicates and confirms its allocation to the Bonds issued in a tax-exempt mode (the “Tax-Exempt Bonds”) of a portion of its private activity bond limit, as previously received, or to be received from the California Debt Limit Allocation Committee, in an amount up to the applicable principal amount of Tax-Exempt Bonds issued and delivered to finance certain costs of the Project and to pay certain costs of issuance of the Tax-Exempt Bonds, so as to satisfy the requirements of Section 146(e) of the Internal Revenue Code of 1986, with respect to the Tax-Exempt Bonds.

**Section 10.** Each officer of the Authority, acting alone, is hereby authorized and directed, acting alone, to do any and all ministerial acts that the officer may deem necessary or advisable in order to consummate the issuance, sale or delivery of the Bonds, and otherwise to effectuate the purposes of this Resolution, the Loan Agreement, the Indenture, the Purchase Contract and the Official Statement. The Authority hereby approves any and all documents to be delivered in furtherance of the foregoing purposes, including without limitation, any certifications, including, a tax certificate.

**Section 11.** The provisions of the resolution of the Authority entitled “Resolution of the California Pollution Control Financing Authority Delegating Certain Powers and Authorizing Certain Actions Related to Bond Financings” adopted by the Authority on May 26, 2010, apply to the documents and actions approved in this Resolution, and the provisions of such resolution are incorporated herein by reference.

**Section 12.** The Authority hereby approves and ratifies each and every action taken by its officers, agents, members and employees prior to the date hereof in furtherance of the purposes of this resolution.

**Section 13.** This resolution shall take effect immediately on its passage. The adoption by the Authority of this final resolution shall not be referred to in any application before any government agency as evidence of the feasibility, practicality or suitability of the Project or in any application for any required permission or authority to construct or operate the Project.



**EXHIBIT A**

Name of Issue: \$9,695,000  
California Pollution Control Financing Authority  
Wastewater Treatment Facilities Revenue Bonds  
(Hilmar Cheese Company, Inc. Project) Series 2010 (the “Bonds”)

Maximum Amount of Issue: \$9,695,000 (tax-exempt)

Issuer: California Pollution Control Financing Authority (the “Authority”),  
Sacramento, CA

Borrower: Hilmar Cheese Company, Inc., a California corporation

Trustee: The Bank of New York Mellon Trust Company, N.A.

Senior Underwriter or Placement Agent: W.R. Taylor & Company, LLC

Remarketing Agent: W.R. Taylor & Company, LLC

Bond Counsel: Kutak Rock LLP, Los Angeles, CA

Project: The proceeds of the Bonds will be used to pay a portion of the cost of acquiring, constructing and installing wastewater treatment facilities and related equipment at Borrower’s facilities located at 9001 North Lander Avenue, Hilmar, California 95324.

Maximum Bond Term: Not to exceed 25 years

Type of Sale: Negotiated sale

Denomination: \$100,000 or any integral multiple of \$5,000 in excess thereof while in variable rate mode

Financing Structure: Variable rate demand bonds; convertible to a term mode or private placement mode pursuant to the Indenture

Maximum Interest Rate: 12%

Letter of Credit: Bank of the West

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Other Credit Enhancement:	Not applicable
Anticipated Bond Rating:	Minimum “A”
Type of Financing:	Wastewater Treatment Facilities
Tax-Exemption:	The interest on the Bonds is excludable from gross income for federal income tax purposes, is exempt from State of California personal income taxes and is not a preference item for purposes of the federal alternative minimum tax
Security:	The obligation of the Authority to repay the Bonds is a special, limited obligation of the Authority payable solely from payments made by the Borrower pursuant to the Loan Agreement and amounts drawn by the Trustee under the Letter of Credit.

**THE CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY**

**RESOLUTION NO. 08-242-12**

**A RESOLUTION DEDICATING FOR USE OF A PORTION OF THE 2008 STATE  
CEILING ON QUALIFIED PRIVATE ACTIVITY BONDS FOR AN  
EXEMPT FACILITY PROJECT**

**WHEREAS**, the California Pollution Control Financing Authority (“CPCFA”) has received an application (“Application”) from Hilmar Cheese Company, Inc. and/or its Affiliates (“Project Sponsor”) for approval of the issuance of revenue bonds; and

**WHEREAS**, on October 27, 2010, CPCFA approved Final Resolution No. 510 (“Final Resolution”) authorizing the issuance of up to \$9,695,000 of its solid waste disposal revenue bonds (Hilmar Cheese Company, Inc. Project) Series 2010 (“Bonds”); and

**WHEREAS**, in seeking CPCFA approval of the Final Resolution, the Project Sponsor represented certain facts and information concerning the project to CPCFA which were relied upon by CPCFA in approving the Final Resolution; and

**WHEREAS**, the California Debt Limit Allocation Committee (“CDLAC”) has previously transferred to CPCFA a portion of the 2008 State Ceiling on Qualified Private Activity Bonds pursuant to Section 146 of the Internal Revenue Code of 1986, as amended, for use by CPCFA to issue bonds or other obligations in a manner consistent with CDLAC’s policies and procedures. Accordingly, capitalized terms not otherwise defined shall have the meanings ascribed to them in the “Procedures of the California Debt Limit Allocation Committee Implementing the Allocation of State Ceiling on Private Activity Bonds” (“CDLAC Procedures”); and

**WHEREAS**, it is appropriate for CPCFA to confirm the use of a portion of the 2008 State Ceiling on Qualified Private Activity Bonds allocated to CPCFA (“CPCFA Allocation”) to the issuance of the Bonds as set forth in the Final Resolution;

**NOW, THEREFORE**, CPCFA resolves as follows:

**Section 1.** CPCFA Allocation in the amount of \$9,695,000 is hereby dedicated to the issuance of the Bonds. The dedicated CPCFA Allocation may be used only by the Project Sponsor and only for the issuance of Bonds for the Project, as specifically described in Exhibit A, and consistent with the terms of the Final Resolution. All of the terms and conditions of Exhibit A, and the Final Resolution are incorporated herein as though set forth in full (this resolution, the Final Resolution and Exhibit A, collectively “Resolution”).

**Section 2.** The terms and conditions of this Resolution shall be incorporated in appropriate documents relating to the Bonds, and the Project Sponsor and all its respective successors and assignees, will be bound by such terms and conditions.

**Section 3.** Any modification to the Project made prior to the issuance of the Bonds must be reported to the Executive Director and shall require reconsideration by the CPCFA before the Allocation may be used for the Project.

**Section 4.** The CPCFA Allocation dedicated by this Resolution shall automatically revert to CPCFA unless the Bonds for the Project have been issued by CPCFA by the close of business on **January 26, 2011**. In a case of extreme hardship, the Deputy Executive Director or the Executive Director may extend this date by up to five (5) business days.

**Section 5.** Within twenty-four (24) hours of issuing the Bonds, CPCFA shall notify CDLAC via the email or the fax number as provided in Section 5140 of the CDLAC Regulations that the Bonds have been issued. This notice shall identify the Project Sponsor, the project or program, the date and amount of the Bonds issued.

**Section 6.** Within fifteen (15) calendar days of the Bond closing, CPCFA or its counsel shall formally transmit to CDLAC information regarding the issuance of the Bonds by submitting the appropriate completed Report of Action Taken in a form prescribed by and made available by CDLAC.

**Section 7.** Any differences between the amount of Bonds issued and the amount of the CPCFA Allocation dedicated in Section 1 of this Resolution shall automatically revert to CPCFA. If at any time prior to the expiration date set forth in Section 4 hereof the Project Sponsor determines that part or all of the CPCFA Allocation dedicated in Section 1 of this Resolution will not be required by the Project by that date, the Project Sponsor shall promptly give notice to CPCFA.

**Section 8.** In consideration of the CPCFA Allocation dedicated in Section 1 of this resolution, the Project Sponsor shall comply with all of the terms and conditions contained in this Resolution and ensure that these terms and conditions are included in the documents related to the Bonds. Further, the Project Sponsor expressly agrees that the terms and conditions of this Resolution may be enforced by CDLAC or CPCFA through an action for specific performance or any other available remedy, provided however, that CDLAC and CPCFA agree not to take such action or enforce any such remedy that would be materially adverse to the interests of Bondholders. In addition, CPCFA shall ensure that the Bond documents, as appropriate, expressly provide that CDLAC is a third party beneficiary of the terms and conditions set forth in this Resolution.

**Section 9.** The Project Sponsor or its successor-in-interest shall provide certifications of compliance with the terms and conditions set forth in this Resolution when reasonably requested by CDLAC or CPCFA.

**Section 10.** This Resolution shall take effect immediately upon its adoption.

**RESOLUTION NO. 08-242-12**  
**(AN EXEMPT FACILITY PROJECT)**  
**EXHIBIT A**

1. Project Sponsor: Hilmar Cheese Company, Inc. and/or its Affiliates
2. Application #: 00814
3. Project User: Hilmar Cheese Company, Inc.
4. Project Name: Hilmar Cheese Company, Inc.
5. Location: Merced County
6. Credit Enhancement: Bank of the West
7. The Credit Enhancement Provider/Private Placement Purchaser at the time of issuance will be the same as represented in the application.
8. Amount of Allocation: \$9,695,000

## Attachment A

STANDING COMMITTEES  
VETERANS AFFAIRS  
CHAIR  
APPROPRIATIONS  
BUDGET & FISCAL REVIEW  
GOVERNMENTAL ORGANIZATION  
SENATOR DENHAM@SEN.CA.GOV  
WWW.SEN.CA.GOV/DENHAM

### California State Senate

SENATOR  
JEFF DENHAM  
TWELFTH SENATE DISTRICT



SELECT COMMITTEES  
CALIFORNIA'S HORSE  
RACING INDUSTRY  
CALIFORNIA'S WINE INDUSTRY  
CLIMATE CHANGE &  
A.B. 32 IMPLEMENTATION  
INTERNATIONAL BUSINESS TRADE  
JOINT COMMITTEE  
FAIR, ALLOCATION &  
CLASSIFICATION

August 18, 2010

Mr. Michael Paparian  
Executive Director  
California Pollution Control Financing Authority  
915 Capitol Mall, Room 457  
Sacramento, California 95814

Dear Mr. Paparian,

I am writing to express my full support of Hilmar Cheese Company's (the "Company") application to secure a full allocation of the State of California's tax-exempt volume cap. Receipt of volume cap will support the Company's planned bond offering to finance technology improvements and to make improvements to the Hilmar, California water reclamation facility.

Since its establishment in 1984, the Company has been a good standing corporate citizen of the State. Out of Hilmar, California, the Company operates one of the world's largest single-site cheese and whey processing facilities and employs more than seven hundred Central Valley citizens.

I encourage the California Pollution Control Financing Authority and others involved in the bond allocation process to fully support the Company's request. Please feel free to call if I can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Denham".

Jeff Denham  
Senator, 12<sup>th</sup> District

cc: Hilmar Cheese Company, Inc.

REPRESENTING MADERA, MERCED, MONTEREY, SAN BENITO AND STANISLAUS COUNTIES

STATE CAPITOL, ROOM 3076  
SACRAMENTO, CA 95814  
(916) 881-4012  
(916) 443-0773 FAX

1231 9TH STREET, #175  
MODESTO, CA 95354  
(209) 577-6592  
(209) 577-4963 FAX

369 MAIN STREET, #208  
SALINAS, CA 93901  
(831) 769-8040  
(831) 769-8086 FAX

1640 N STREET, #210  
MERCED, CA 95340  
(209) 726-5495  
(209) 726-5498 FAX